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IN THE COUNTY COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON, COUNTY, FLORIDA

LEONARD J. CLARK
and DEBRA K. CLARK
Petitioners,
mal

Case No.: 2003-4066 CC

vs.

LEON COUNTY FLORIDA,
Respondent.

FILED
COUNTY CIVIL DIV.
03 SEP 26 AM 8:30
BOB INZER
CLERK COUNTY COURT
LEON COUNTY, FLORIDA

ORDER ON COMPLAINT FOR DECLARATORY JUDGMENT

THIS CAUSE came before the Court for a Declaratory Judgment pursuant to Section 86.011, Florida Statutes. The Petitioners are in doubt of their rights, under Leon County Code of Laws, Chapter 4, Section 4-94 and Section 767.12(1)(d), Florida Statutes, to appeal the classification of their dog, "Pete," as an aggressive animal by the Leon County Classification Committee.

Having considered the petition, this Court finds as follows:

FINDINGS OF FACT

1. Petitioners, Leonard J. and Debra K. Clark are Leon County residents and were owners of two dogs, "Sandy" and "Pete" in Leon County, Florida on August 12, 2002.
2. Following an unprovoked attack on two long haired chihuahuas on a public street adjacent to Petitioners' premises at 3981 Elder Lane, Tallahassee, Leon County, Florida, Sandy and Pete were taken into custody by Leon County Animal Control Officers.

3. One of the dogs in the unprovoked attack died from wounds received from Petitioners' dogs.

4. Edward Cerovski, the attacked dogs' owner, petitioned the Leon County Classification Committee to have the dogs classified as dangerous or aggressive as set forth in Leon County Code of Laws, Chapter 4, Section 4-93, Dangerous Animals. The Leon County Code of Laws in Chapter 4 is authorized by and modeled after provisions of Chapter 767, Florida Statutes.

5. On October 10, 2002, the Leon County Classification Committee, after reviewing the evidence and hearing witnesses, found Petitioners' dog "Pete" was an "aggressive" animal.¹

6. As a result of the aggressive animal classification, Pete was ordered to permanent confinement as set forth in the Leon County Code of Laws, Chapter 4, Section 4-91, Dangerous Animals.

7. Petitioners were further advised:

"If the owner or keeper of an animal classified as dangerous or aggressive disputes the order of the classification committee then he or she may within ten business days following the date of the order apply to a court of competent jurisdiction for remedies which may be available."

8. Petitioners timely sought review of the Classification Committee Order in the Circuit Court In and For Leon County, Florida in Case Number 2002-CA-2611.

9. Finding, it was without jurisdiction, the Circuit Court dismissed the case based on the following:

¹ Petitioners voluntarily euthanized their dog Sandy.

Here, a "classification committee" of Leon County's division of animal control determined that Plaintiff's dog was "aggressive." It is important to note that had Plaintiffs' dog been classified as "dangerous", they would have had a statutory right to "appeal" the classification to the county court pursuant to Section 767.12(1)(d), Florida Statutes (2002). Apparently since the "aggressive" classification has far less onerous consequences than a "dangerous" classification, the Legislature did not provide for an appeal to the county court. Although Leon County could have provided for an "appeal" of such determinations to the County Commission, Section 4-94 of the Code does not. The imperfect result is that this Court does not have certiorari jurisdiction over the decision of the classification committee, and the Plaintiffs do not appear to have a remedy under Chapter 767. Therefore, in its current status, the action must be dismissed for lack of jurisdiction; it is therefore
ORDERED AND ADJUDGED that Defendant's motion to dismiss is **GRANTED**, with prejudice.

10. An "aggressive animal" is defined in the Leon County Code of Laws,

Section 4-26 as follows:

"Aggressive animal" shall mean any animal which has injured or killed a domestic animal in a first unprovoked attack while off of the premises of the owner.

11. A "dangerous animal" includes the repeat offender aggressive animal, and those which either bite, chase, attack or menace humans, or is trained for dog fighting.

12. A "dangerous animal" is defined by the Leon County Code of Laws as follows:

"Dangerous animal" shall mean an animal that has, when unprovoked, bitten, attacked, or endangered or has inflicted severe injury on a human being on public or private property; has more than once severely injured or killed a domestic animal while off the owner's property; has, when unprovoked, chased or approached a person upon the

streets, sidewalks, or any public grounds in a menacing fashion, provided that such actions are attested to in a sworn statement by one or more persons and dutifully investigated by the appropriate authority; or, in the case of a dog, has been used primarily or in part for the purpose of dog fighting or is a dog trained for dog fighting. (Section 4-26, Leon County Code of Laws)

* * *

"Severe injury" means any physical injury that results in broken bones, multiple bites, or disfiguring lacerations requiring sutures or reconstructive surgery. (Section 4-26, Leon County Code of Laws)

13. According to Leon County Code of Laws, an "aggressive animal" could later be classified as an "dangerous animal," but a "dangerous animal" could never meet the definition of an "aggressive animal." For example, a dog which injures a cat in a first unprovoked attack off the owner's premises could be classified as an "aggressive animal." If the animal later injures another animal, in a second attack, then the dog could be classified as a "dangerous animal."

14. Provocation is an absolute defense to classification of an aggressive or dangerous animal. Section 4-92, Leon County Code of Laws.

15. The Classification Committee has the authority to determine punishment of an animal classified as aggressive or dangerous. That punishment could be the same regardless of classification:

Any animal classified as dangerous or aggressive according to the definitions in this article shall be, at the time of being so classified, either confined permanently to the owner's premises, or humanely destroyed. Section 4-91, Leon County Code of Laws. (Emphasis supplied)

16. When permanent confinement is ordered, the Classification Committee reserves jurisdiction to alter the animals disposition-if the animal even assists in the

wounding, biting, attacking another animal or person:

"Where a disposition of permanent confinement has been determined by the classification committee, the committee shall reserve jurisdiction to alter the disposition should the classified animal, subsequent to the determination by the committee, bite, wound, attack, or kill or assist in biting, wounding, attacking, or killing a person or domestic animal. Thereafter, the director of animal control shall notify the animal's owner and the petitioner in writing by registered mail or certified hand delivery of the finding of the investigation, the proposed disposition of the animal and the review process." Section 4-93(c), Leon County Code of Laws.

17. Section 4-94, Leon County Code of Laws details the owner's right to contest the determination of the Classification Committee:

(a) If the owner or keeper of an animal classified as dangerous or aggressive disputes the order of the classification committee, he or she may within ten business days following the date of receipt of the order apply to a court of competent jurisdiction for any remedies which may be available. Section 4-94, Leon County Code of Laws. (Emphasis supplied)

18. Leon County Code of Laws do not describe the various courts of competent jurisdiction and the means for determining the competency of each court.

19. Following its determination that dangerous dogs are an "increasingly serious and widespread threat to the public safety and welfare because of unprovoked attacks, the Florida Legislature enacted Chapter 767, Florida Statutes.

20. Leon County Code of Laws closely follows Chapter 767 with some minor changes. "Dangerous dog" is described in Section 767.11(1), Florida Statutes, as any dog according to the records of the appropriate authority to:

(a) have aggressive bitten, attacked, or endangered or has inflicted severe injury on a human being. (Severe injury means "any

physical injury that results in broken bones, multiple bites, or disfiguring lacerations requiring sutures or reconstructive surgery. Section 767.1(3), Florida Statutes. In this respect the Leon County Code is identical to the State statutes);

- (b) has more than once severely injured or killed a domestic animal while off the owner's property;
- (c) has been used primarily or in part for the purpose of dog fighting or is trained for dog fighting; and
- (d) one or more persons attest, in an investigation, the animal has, when unprovoked, chased persons on the streets, sidewalks or public grounds in a menacing fashion.

21. Once the animal control authority has made an initial determination of sufficient cause to classify an animal as dangerous, written notification of the sufficient cause finding must be given to the owner along with notification of the right to a hearing. The "animal control authority" is defined in Section 767.11(5), Florida Statutes to include a county.

22. The statute requires each local governing authority to offer a pre-deprivation hearing which conforms with Section 767.12, Florida Statutes. (Section 767.12(1)(c), Florida Statutes)

23. Once classified as a dangerous dog, the animal control authority must advise the owner of their right to appeal the classification to county court:

"Once a dog is classified as a dangerous dog, the animal control authority shall provide written notification to the owner by registered mail, certified hand delivery or service, and the owner may file a written request for a hearing in the county court to appeal the classification within 10 business days after receipt of a written determination of dangerous dog classification and must confine the dog in a securely fenced or enclosed area pending a resolution of the appeal. Each applicable local governing authority must establish appeal procedures that conform to this paragraph. Section 767.12(1)(d), Florida Statutes. (Emphasis supplied)

In this respect, the Leon County Code of Laws deviates from the clearly established appeal process to county courts by choosing to advise litigants to appeal to a "court of competent jurisdiction for remedies which may be available."

24. Once classified as an "aggressive animal" or "dangerous animal," under Leon County's Code, or as a "dangerous" dog under the Section 767.12, Florida Statutes, the dog's owner must obtain a certificate of registration for the dog from the animal control authority serving the area in which he or she resides, and the certificate must be renewed annually. (Section 4-96(b), Leon County Code of Laws and Section 767.12(2), Florida Statutes). Additionally, the owner must immediately notify the appropriate animal control authority when the dog:

- (a) is loose or unconfined;
- (b) has bitten a human being or attacked another animal;
- (c) is sold, given away, or dies; and
- (d) is moved to another address... (Section 4-97, Leon County Code of Laws and Section 767.12(3), Florida Statutes).

25. The owner must neuter dangerous animals and tattoo dangerous (or aggressive animals) and it is unlawful for the owner of a dangerous dog to permit the dog to be outside a proper enclosure unless the dog is muzzled and restrained by a substantial chain or leash and under control of a competent person. (Section 4-98, 4-99, Leon County Code of Laws and Section 767.12(4), Florida Statutes)

26. Finally, Section 767.14, Florida Statutes authorizes a local government to:

- (a) place further restrictions or additional requirement on the owner of a dangerous dog; and
- (b) develop procedures for the implementation of the act, provided the provisions of the act is not lessened by such requirements.

CONCLUSION OF LAW

27. This Court has jurisdiction over this matter pursuant to Section 86.011, Florida Statutes, and Section 34.01(b), Florida Statutes, giving the county court jurisdiction to hear all violations of municipal and county ordinances.

28. While Leon County has chosen to define a "dangerous animal" in a similar manner as the Legislature has done for a "dangerous dog," its definition of "aggressive animal" is not provided in state law. The County's desire to enforce its dangerous animal ordinance through Chapter 4, Leon County Code of Laws is clear. Leon County has statutory authority to regulate the ownership of animals for the protection of Leon County citizens. Pursuant to Section 125.01(1)(t), Florida Statutes, "Leon County is authorized to adopt ordinances... necessary for the exercise of its powers and prescribe fines and penalties for the violation of ordinances in accordance with law."

29. The Third District Court of Appeal has held that a county can create a separate scheme for hearing animal control citations with appeals to circuit and county courts and such separate schemes do not violate the constitutional mandate that circuit and county courts' jurisdictions "shall be uniform throughout the state." See Metropolitan Dade County v. Hernandez, 708 So. 2d 1008 (Fla. 3rd DCA 1998). The Court held:

The County contends, and we agree, that its separate scheme for animal control citation appeals is constitutional and follows the constitution's mandate that the circuit and county courts' jurisdictions "shall be uniform throughout the state." Art. V § 5(b), 6(b), Fla. Const. The County's separate scheme is supported by chapter 162, Florida Statutes (1995). Chapter 162 allows counties to enforce their ordinances through code enforcement boards with

appeal to the circuit court (chapter 162, part I) and/or through code enforcement officers with appeal to the county court by trial de novo (chapter 162, part II) or, indeed, "by any other means." See sections 162.13; 162.21(8), Fla. Stat. (1995). Id at 1010.

30. Leon County has chosen to enforce its ordinance through an alternative system of direct appeals from its classification committee to a "court of competent jurisdiction." As the Court described in Metropolitan Dade County, the County is free to adopt an enforcement scheme which best suits its needs:

"Section 162.12(2), of Part I clearly and explicitly confers authority upon the County to adopt, by ordinance, a completely alternative code enforcement system to permit either a code enforcement board or an administrative hearing officer to conduct hearings and assess fines for code violations ... The trial court correctly determined that in this section, the legislature did not limit the County's alternative system to the exact procedures set forth in Parts I and II of Chapter 162. Nor did the legislature preclude the County from combining any features of these parts." Id at 1010, 1011.

31. Petitioners do not challenge the county's right to enforce its animal control ordinance through an alternate system of direct appeal to a court. However, Petitioners argue the ordinance is vague in advising litigants which court they must turn to in order to seek relief from an erroneous Classification Committee decision. This Court agrees and finds no rational basis for the present vagueness of the County's ordinance. In Metropolitan Dade County, the court noted a dog owner's due process rights may be affected if the owner's enjoyment of their dogs is taken without due process of law:

The Due Process Clause of the Fourteenth Amendment requires that deprivation of life, liberty, or property be preceded by a notice and opportunity for hearing appropriate to the nature of the case. Armstrong v. Manzo, 380 U.S.

545, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965). In the County of Pasco v. Riehl, 635 So.2d 17 (Fla. 1994), the court noted Riehl's private property was subject to, among other things, physical confinement tattooing or electric implantation, and muzzling. In the aggregate, these restrictions are a deprivation of property and before such restrictions are imposed the property owner must be afforded an opportunity to be heard. Id at 1011.

32. In Florida, an animal becomes private property when it is under the "private control, confinement and possession" of an owner. Barrow v. Holland, 125 So.2d 749, 751 (Fla. 1960).

33. Persons of common intelligence must not be left to guess at the meaning of the ordinance. Where there is doubt about a statute or ordinance in a challenge for vagueness, the doubt must be resolved in favor of the citizen and against the state. Brown v. State, 629 So.2d 841 (Fla. 1994); In this case the county's ordinance should clearly identify the court and available remedies which are available to owners of animals classified as "aggressive" or "dangerous."

34. Section 767.12(d), Florida Statutes requires each local governing authority to establish appeal procedures which conform to Section 767.12, Florida Statutes. That section clearly directs appeals to county court. Until Leon County clarifies its ordinance otherwise, its language: "apply to a court of competent jurisdiction for any remedies which maybe available" shall be construed to mean "Leon County Court" for animals classified as "aggressive" or "dangerous" since the potential punishments and restrictions may be equally harsh for either classification.

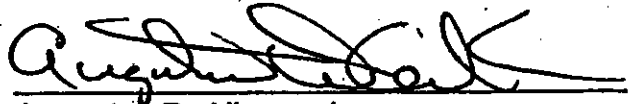
Accordingly, it is

ORDERED and ADJUDGED

(1) That Petitioners, Leonard J. Clark and Debra K. Clark are entitled to, appeal the October 10, 2002 determination of the Classification Committee; and

(2) the instant request for Declaratory Relief shall be considered a properly filed appeal of the October 10, 2002, Classification Committee Determination to the Leon County Court. The Clerk of Court is directed to promptly notice the instant action for hearing on Petitioners' appeal. Defendant's Motion for Summary Judgment is DENIED as MOOT and also there exists a disputed issue of material fact: whether Pete injured or killed a domestic animal.

DONE and ORDERED at Tallahassee, Leon County, Florida this 25th day of September, 2003.


Augustus D. Aikens, Jr.
County Court Judge

Copies furnished to:

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